ILE COPY

FILED
AUG 4 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964
No. 5, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

CARL WHITSON, a Long Beach, California, Taxpayer,

Amicus Curiae.

REPLY OR SUPPLEMENTAL BRIEF OF AMICUS CURIAE

JOHN B. OGDEN
Attorney for Amicus Curiae
1408-9 Liberty Bank Bldg.
Oklahoma City 2, Oklahoma

LONG BEACH REPORTER

TOPICAL INDEX

Page

Reason for Reply or Supplemental Brief of Amicus Curiae 1

Preliminary Statement 2

Summary of Arguments 2

Arguments

- Boundary Lines in Long Beach 4
- Inland Waters 5
- The Court Is Not Bound by Agents or Statements by Others 6
- History of Bays 6
- Historic Use of the Area 9
- Legal Recognition 10
- California Legislative History of Lands in Long Beach 10
- Long Beach Harbor 12
- Submerged Lands Act 13
- Effect of Artificial Structures and Fill on Long Beach Proprietary Rights 14
- Long Beach Title to Submerged Lands 16
- Nature of Trust or Title 21
- Income From and Control Over the Lands 23
- Long Beach Owns All Lands Within its Boundaries Regardless of Kind or From Whom it Received Title 24
- Kind of Title Held by the City to Tidelands and Lands Under Inland Waters 25
- The Courts Have Treated the City as Private Trustee 29
- Consideration for the Grant 30
- Continuing Valuable Consideration to the State 31
- Private Trusts 31
- The 1911 Grant Did Not Contain Provisions that Trust Could be Revoked or Modified 35
- Later Efforts to Take Oil and Gas Income from Long Beach 36

Conclusion 39

Appendix A 1a

Appendix B 1b

Appendix C 1c

Appendix D 1d

Appendix E 1e

Appendix F 1f

TABLE OF AUTHORITIES CITED

Cases

Page

Anderson v. Ott, 127 Cal. App. 122, 15 P. 2d 526 39

Board et al v. Lucas, 93 U. S. 108, 23 L. Ed. 822, p. 824 31

Borax Consolidated Co. v. Los Angeles, 296 U. S. 10 34

City of Long Beach v. Marshall, (1938) 11 Cal. 2d 609, 82 Pac. 2d 362 ..... 11, 17, 19, 21, 24, 25, 30

City of Long Beach v. Morse, (1947) 31 Cal. 2d 254, 188 P. 2d 17 ..... 17, 18, 22

County of Los Angeles v. Southern California Telephone Co., 32 Cal. 2d 378, 196 P. 2d 773 at 778 31

Gray v. Union Trust Co., 171 Cal. 637, 154 Pac. 306 34

Illinois Central Ry. Co. v. Illinois, 146 U. .S 387 ..... 22, 25

La Rocoa, (1963) 192 A. 2d 409, 411 Pa. 633 35

Lightfoot v. Alabama, (1960) 364 U. W. 339 at p. 345 37

Mallon v. City of Long Beach, 44 Cal. 2d 199, 282 P. 2d 481 ..... 20, 22, 23, 30, 33, 34

Ocean Industries v. Superior Court of California, in and for Santa Cruz County, 200 Cal. App. 235, 252 P. 722 at 724 8

People v. Hecker, 179 Cal. App. 2d 823 ..... 14, 25

Pollard v. Hagan, 3 How. 212 ..... 5, 25

Prince v. Burger, (1962) 176 A. 2d 870, 227 Md. 351 35

Roberts v. Taylor, (C.C.P. 1924) 300 F. 257 (Certiorari denied 226 U. S. 629) 34

Superior Oil Company v. Fontenot, 213 P. 2d 565 (cert denied 348 U. S. 837) 30

Twombley v. City of Long Beach, et al decided June 25, 1964, by the United States Court of Appeal for the Ninth Circuit 24, 32

United States v. California, 332 U. S. 19 .... 4, 5, 6, 22, 24, 26

United States v. Carrillo, 13 Fed. Supp. 121 (S. D. Cal. 1935) 10

United States v. Louisiana, (1960) 363 U. S. 1, at page 35 ..... 14, 18, 25

United States v. Mission Rock Co., 189 U. S. 391 5

U. S. v. Morel, 13 Amer. Jur. 286, Fed. Cas. No. 15,807 8

United States v. State of Washington, 294 F. 2d 830 (C. A. 9) certiorari denied, 369 U. S. 817 14

IN THE

Supreme Court of the United States

October Term, 1964
No. 5, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

CARL WHITSON, a Long Beach, California, Taxpayer,

Amicus Curiae.

REPLY OR SUPPLEMENTAL BRIEF OF AMICUS CURIAE

REASON FOR REPLY OR SUPPLEMENTAL BRIEF OF AMICUS CURIAE

I

The first brief was prepared and printed prior to the time the writer was furnished any documents or briefs by either the Attorney General of California, or the Solicitor General of the United States. Now some have been received, which consist of some two

hundred pages for each party, so the short brief filed by amicus curiae is not adequate for a full discussion of the issues.

II

On June 25, 1964, the United States Court of Appeal for the Ninth Circuit declined to pass upon the constitutionality of Cal. Stats., Chapter 29, 1956; or Cal. S.B. 60, Extra Session 1964. Also it declined to decide what kind of title and ownership Long Beach, California, received or has to offshore submerged lands within the city limits, but did hold and decide that the Submerged Lands Act "confirmed whatever conveyance of title the State had already made," and affirmed a Federal District Court order dismissing the case of *Lewis W. Twombley v. City of Long Beach*, et al. (not yet reported but attached hereto as Appendix "A")

III

The State of California has passed a new statute, Senate Bill No. 60, 1964, which was signed by the Governor and became law after the first brief was at the printers; this may affect the claims of the State.

PRELIMINARY STATEMENT

This supplemental brief is intended as both a clarification and reply to the claims of the State of California, as they affect Long Beach.

SUMMARY OF ARGUMENTS

It will be argued as follows:

First: That this Court has already established in the instant case in 1947 the legal boundary line as the "coast line" or the ordinary low tide line as the bound-

ary line, and lands shoreward of such line as inland waters. That the criterion or formula for measuring such line and lands should be the one shown by the first U. S. Coast Survey Map; and that after the boundary line is once established it should not be allowed to change at all for any reason.

Second: That Long Beach owns all tidelands, submerged lands, and lands under inland waters within the city limits and extending seaward three miles from high tide line, including bays, inlets, harbors and rivers.

Third: That whether the City received its title from the State under state law or from the United States under the Submerged Lands Act, the title is a fee title in a special trust so that all of the people can have access to and use of the waters for commerce, navigation and fishing.

Fourth: That the grant from the State to the City in 1911 was for valuable consideration paid by the City and taxpayers thereof, and a continuing valuable consideration to the State.

Fifth: That the State is powerless to revoke or change the terms of the grant or trust.

Sixth: That the City of Long Beach is entitled to any income from such lands to be used for any public purposes as provided by City Charter, before 1953.

Seventh: That any surplus funds received by the City from such lands, not needed or required for harbor, commerce and navigation, reverts to and can be used for any public purpose by the city.

Eighth: That any state law or laws which attempt to take any funds or income from the city,

or place any restrictions or trusts on the use of the said funds are unconstitutional and void, or ineffective for such purposes.

ARGUMENTS

I

BOUNDARY LINES IN LONG BEACH

This question or issue seems to be in two parts, and has been complicated by unfounded claims with no facts to rely upon.

First: What was intended as the "ordinary low water mark," low tide line, or coast line, as used by the Supreme Court of the United States in *United States v. California*, 332 U. S. 19; and what was intended by the Court in the same decision as "inland waters."

The Court had before it the question of title to the three mile marginal belt underlying the Pacific Ocean laying seaward of the ordinary low-water mark on the coast of California. In other words it was the very same three mile marginal belt that the State of California now claims is inland waters. It should be remembered the Court did not agree then, and granted the injunction. *United States v. California*, 332 U. S. 804-805. The decree was very plain and specific that the State of California had no title to or property interests in the very same land the State now claims it has at all times owned. The Court in effect established the "ordinary low-water mark" as the boundary line at that time. It is hard to see just why the matter was not settled once and for all at that time, and why there are still

claims that the Court did not mean what it said or that there is any doubt what it did mean. All that should have been required at that time was for all parties to accept the decision as the settled law and the guide line to be applied to the maps or surveys, and thereby establish the physical boundary line dividing tidelands from offshore submerged lands.

It is well to take note that the Court rejected all dividing lines or stipulated lines by the State of California and the Attorney General of the United States, and used plain and specific language stating that such dividing lines are not binding on the Court. In other words the Court in effect established the boundary lines and did not permit the agents of the State or United States to change such lines.

U. S. v. California, 332 U. S. 804-6.

INLAND WATERS

It seems clear that when the Court used the phrase "and outside of inland waters" in *United States v. California*, 332 U. S. 19, it was referring to such waters as were before the Court in *Pollard v. Hagan*, 3 How. 212, which were lands washed by the daily ebb and flow of the tide on the banks of the Mobile River, or such lands as were involved in the land-locked bay at San Francisco in *United States v. Mission Rock Co.*, 189 U. S. 391. Here again it should be noticed that the Court rejected as not binding the first known attempt to extend the so-called San Pedro Bay over into Long Beach by the above mentioned stipulated lines and thereby circumvent the effect of the decree in *U. S. v. California*. It did not work then and should not now.

After the Court had definitely and specifically rejected the stipulated lines and the efforts to extend San Pedro Bay over into Long Beach, *U. S. v. California*, 332 U. S. 804-6, just why the Special Master should disregard the decree and still recommend that any part of offshore lands within Long Beach are to be considered as San Pedro Bay or inland waters (Report of Special Master, May 22, 1951, pp. 41-42), is hard to understand. We think it is error as will hereinafter be explained.

THE COURT IS NOT BOUND BY AGENTS OR STATEMENTS BY OTHERS

This Court is not bound by agents of the Government or the State of California, *U. S. v. California*, 332 U. S. 19, at 40. It is likewise not bound by what some member of Congress says when he is trying to get a law passed to override a decision by this Court. At most such statements are a slight showing of the intent of Congress.

Since Congress refused to name or define bays, and failed and refused to define "inland waters" and left it up to the Courts to define, it is now up to this Court to do so. It is hoped this brief will be of some help to the Court.

HISTORY OF BAYS

Historically, before California was admitted to the Union, and for many years thereafter, as a matter of fact, there were no bays within the present city limits of Long Beach. (Exhibit "C", Appendix to first A. C. brief) The closest place where ships or barges were unloaded was at the old "Anaheim Landing" which

is east of and outside of Long Beach; and was destroyed by floods in late 1860. Bancroft's Works, Vol. XXIII, History of California, Vol. VI, p. 522.

The only river outlet shown on the U. S. Coast Survey Map of 1859, was the mouth of the San Gabriel River where it met the Pacific Ocean just east of "Rattle Snake Island." (Exhibit "A", Appendix to first A. C. brief)

The area now known as the San Pedro Bay (Los Angeles Harbor) is west of and outside of Long Beach. It was shown on the U. S. Coast Survey Map as "San Pedro Creek." (Exhibit "A", Appendix to first A. C. brief) It was not until about 1870 that any dredging or other work was started in San Pedro Creek to start what later became the great harbor of Los Angeles, Willard, The Free Harbor Contest at Los Angeles, p. 35. (Los Angeles, 1899). We in Long Beach are not concerned with the Los Angeles Harbor or the San Pedro Bay, except the belated attempt to extend the San Pedro Bay over into Long Beach.

It may be noticed that the United States Army had established Ft. McArthur near "Old San Pedro" on the Palos Verdes Peninsula, and in about 1900 the United States built or allowed the first breakwater to extend into the Pacific Ocean. This breakwater was about two miles long, extending from the southeasterly part of Point Fermin into the Pacific Ocean. (Map opposite page 104 of California Vol. II, Appendix of brief) This first breakwater did not extend to the present boundary line of Long Beach, but later breakwaters built by the United States after oil and gas were discovered did extend into the Pacific Ocean in front of Long Beach, some six or eight miles.

The standard definition of a bay is, "a body of water bounded on three sides by land," Webster. The legal definition is "An opening into the land, or arm of the sea, where the water is shut in on *all* sides except at the entrance. *U. S. v. Morel*, 13 Amer. Jur. 286 Fed. Cas. No. 15,807; *Ocean Industries v. Superior Court of California*, in and for Santa Cruz County, 200 Cal. App. 235, 252 P. 722, at 724.

There was no body of water in what is now the city limits of Long Beach, when California was admitted to the Union that will meet the above description of a "bay."

It is urged that there are no lands under inland waters outside of the ordinary low-water mark, low tide line, or bluff line within Long Beach, California; that the San Pedro Bay extends at most to the mouth of "San Pedro Creek" as shown by the U. S. Coast Survey Map of 1859; and that the San Pedro Bay does not extend into or include Long Beach.

The criteria or formula suggested by the United States in determining a bay is, as we understand it, the so-called Boggs rule: when a straight line of not more than ten miles is measured from headland to a land point at low tide line, a semicircle placed along that line would not reach beyond the land or coast line. Such a criteria if followed would disqualify the Pacific Ocean area in front of Long Beach as any part of the San Pedro Bay.

The State of California has gone to great lengths to claim that San Pedro Bay is inland waters of the state, and extends all the way from the southwest point of Pt. Fermin to Newport Beach, a distance

of 19.3 miles, and that the semicircle criteria should be rejected. It would seem just as logical, if the State can extend the closing line 19.3 miles to Newport Beach, that it could, if it chooses, extend the line all the way to San Diego a distance of about 100 miles and claim all of the land along the south Pacific Ocean as inland waters. It is urged the extending of such lines to take more land from the United States is error.

HISTORIC USE OF THE AREA

It is claimed by the State of California that use of Anaheim Landing and San Pedro Bay (actually it was shown as San Pedro Creek) by the Spanish and Mexican vessels prior to admission of California to the Union was sufficient use to convert some 19.3 miles of the Pacific Ocean into a bay of inland water. This, in our view, is error.

It is not claimed that the State of California built one pier, dock, wharf or railroad in the area; or that the State sailed one vessel into any bay, landing or dock from the day of admission (1850) to 1911 when it conveyed all of its tide and submerged lands to Long Beach and Los Angeles. There was just no building, improvement or control whatever by the State.

Likewise, it is doubtful that the Spanish and Mexican nations built one fort, dock, landing or pier in the whole area; and even if they had, such uses and controls would not be binding on this Court.

There were reports, proposals and Executive Orders, in regard to dredging San Pedro Creek and making a deep-water harbor at San Pedro, California,

as early as 1871, House Executive Doc. 1, Part 2, 42 Cong. 2d Sess. (1871), mostly by the United States Army Engineers. There was not much actual work or building before about 1900, Rivers and Harbors Act, 29 Stats., Chap. 158, pp. 88, 95-96. Senate Document No. 18, 55th Cong., 1st Sess. (1897).

LEGAL RECOGNITION

The main case found on the subject is a criminal case, *United States v. Carrillo*, 13 Fed. Supp. 121 (S. D. Cal. 1935). It is submitted that a criminal case involving the division of police powers of a State and the United States is not binding in property rights division lines of the same parties or a City.

Moreover, even if we agree with the State that the area is San Pedro Bay, and is in fact inland waters, the City of Long Beach owns the lands just the same, since in 1911 the State granted the City all tide and submerged lands, whether filled or unfilled, situated below the high tide of the *Pacific Ocean, or any harbor, estuary, bay or inlet* within said boundaries. (Emphasis added)

CALIFORNIA LEGISLATIVE HISTORY OF LANDS IN LONG BEACH

In 1911 the State of California granted to the City of Long Beach, all tide and submerged lands within the city limits.

This conveyance Stats. 1911, p. 1034 used the words:

> There is hereby granted to the City of Long Beach, a municipal corporation of the State of

> California, and its successors, *all* the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all tide lands and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the *Pacific Ocean* or any harbor, estuary, bay or inlet within said boundaries * * *. (Emphasis added) (Appendix A-1 of first A. C. brief)

This statute of the State of California called the area the "Pacific Ocean" not San Pedro Bay. The same words "Pacific Ocean" were used in two later statutes by the State, Stats. 1925, p. 35; Stats. 1935, p. 793. (Appendix A-2 and A-3, p. 3a and p. 5a of first A. C. brief)

By charter provision of the City of Long Beach, which was approved by the State Legislature of California, the boundary lines of the City were extended into the "Pacific Ocean" three miles. (Appendix C)

It was not until oil and gas was discovered in Long Beach, and after *City of Long Beach v. Marshall*, (1938) 11 Cal. 2d 609, 82 Pac. 2d 362 held that the State intended to and did grant all of its rights to tide and submerged lands to Long Beach, and that the grant was in fee simple; that the State started calling the Pacific Ocean the San Pedro Bay. This was, it appears, an afterthought by the State after the United States had started asserting its claim to the marginal sea along the coast of California. Of course there was a San Pedro Bay in existence for many years but it was located at San Pedro, California, west of the City of Long Beach and did not extend over into Long Beach.

LONG BEACH HARBOR

Prior to 1911 when the State of California made the first grant of tide and submerged lands to Long Beach (Appendix A-1 of first A. C. brief, p. 1a) there was little commercial shipping in Long Beach. Soon after the first grant, public bonds were voted by the citizens of Long Beach to start to build a public harbor as provided by the grant from the State. The harbor was built by the City at no cost to the State as provided by the grant (Appendix A-1, p. 2a, (b) of the first A. C. brief); and the State can and does use the wharves, docks, piers, slips, quays or other improvements without cost to the state, as provided in the same section of the grant.

The City started dredging the San Gabriel River to make and build two deep-water channels, a turning basin, and inner harbor connecting channel, as well as piers, wharves, docks, and other building for a commercial shipping harbor. All were located inside of the mainland. (Exhibit "A", Appendix of first A. C. brief) It should be noted there were no wharves, docks or other shipping facilities built or constructed outside of the mainland (except a Navy landing for personnel) in Long Beach until after 1938, and the *Marshall* case, supra.

Since 1938 a large and modern outer harbor has been built and is still being constructed with large modern docks, wharves, piers, sheds and other buildings seaward or outside of the mainland in the Harbor District of Long Beach. (Map of the State opposite page 104 Vol. II, State Appendix A) The piers and works of this outer harbor or port now extend almost to the outer city limits of three miles. Oil

money and funds were used and are still being used for such buildings and works by the City of Long Beach.

The Special Master concluded that the outermost limits of the Long Beach Harbor Works should be considered inland waters of the State; or the line from which to measure the three mile marginal belt to the dividing line between the lands of the State and the United States. Report of the Special Master, October 14, 1952, pp. 44-48.

It is respectfully urged such conclusion by the Special Master is error.

The net effect of such a rule of law would be to give to the State of California a three mile wide strip of offshore land which the Congress and the terms of the Submerged Lands Act did not intend it to have. Said in a different way, such a rule would take a strip of land three miles wide from the United States, which Congress intended it to keep. Such a rule of law would not hurt Long Beach as it owns the first three miles in any event, and does not claim more.

SUBMERGED LANDS ACT

It is contended herein that Long Beach was granted the first three miles of offshore submerged lands, as the person entitled thereto under state law, by the terms of the Submerged Lands Act (Title II, Sec. 3 [a] 67 Stats. 1953), to be measured from the coast line. If the Special Master is correct in his conclusion and the State of California should get an extra three-mile strip, this, of course, would move the shoreward boundary line of the United States out six miles from low tide line. It is urged such was not the intent

or terms of the Submerged Lands Act.

It is conceded by all, we think, that the Congress has constitutional powers to set and establish property rights dividing lines between the states and the United States in offshore submerged lands. And has the right to establish a line from which to measure the lands.

United States v. Louisiana, (1960) 363 U. S. 1, at page 35.

The Submerged Lands Act granted lands, extending not more than three geographical miles from the "coast line," which the Act defined as "the line of ordinary low water," Section 2, 43 U.S.C. 1301.

EFFECT OF ARTIFICIAL STRUCTURES AND FILL ON LONG BEACH PROPRIETARY RIGHTS

We are not concerned with, and need not be confused by the common law rule of law in regard to riparian owners' titles since all such lines stop at the high tide line in Long Beach. We are here concerned with the dividing line of inland waters owned by the City and offshore submerged lands owned by the United States (prior to the Submerged Lands Act). The Federal law that created the boundary must determine its character, and the State has no authority to diminish rights of the United States.

United States v. State of Washington, 294 F. 2d 830 (C. A. 9) certiorari denied, 369 U. S. 817.

California adheres to the common law view that artificial changes in the shore line do not affect property rights.

People v. Hecker, 179 Cal. App. 2d 823.

Since under the terms of the Submerged Lands Act (Title I, Sec. 2 [a] 43 U.S.C. 1301) (3) "all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined," were granted to Long Beach; it is plain to see that Congress intended the State or the person (Long Beach) to get title to all filled in or reclaimed lands. This does not indicate or show that Congress intended to establish the base line from which to measure the three miles at the outermost limits of such lands. In fact the Act, Title II, Sec. 3 (b) (43 U.S.C. 1311) says:

(1) "The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources;" * * *

showing that Congress did not intend the base line to be further seaward than the "coast line," but did intend to make sure that the City received title to all physical properties within the three miles.

The above provisions of the Act are logical as they do not add to the lands granted to Long Beach under the Act, and they do not subtract from the lands retained by the United States. Any other interpretation placed upon the Act would take valuable oil and gas lands from the United States, but would not help Long Beach in the least.

It is conceded, we assume, that the present seaward boundary line of the City is three miles from the high tide line as it existed when the Charter provision was approved in 1923. The building of piers,

slips, fills, buildings or breakwaters did not and do not extend the City limits three miles from the outer limits of such works.

If the rule of law suggested by the Special Master is adopted by the Court, the City or State could build a jetty, pier or even a pipeline into the Pacific Ocean and thereby claim the lands as inland waters, plus a three mile strip of marginal sea. Such actions would have the undesirable effect of moving the "coast line" seaward at any time, would divest the United States of valuable submerged lands, and constantly keep the coast line in a non-stable position. It is urged this should not be approved by the Court.

It is urged on behalf of the taxpayers and citizens of Long Beach, California, that this Court decide as a matter of law that the coast line in Long Beach is the low tide line as shown by the U. S. Survey Map of 1859, or as it existed in 1911 when the first grant was made by the State (in fact they are about the same); that the coast line has not changed and cannot be changed to move the dividing line between the lands owned by the City and the United States. Such a rule of law, to apply only to the dividing line of offshore submerged lands, would have the advantage of being a permanent line instead of a constantly changing line based upon rules of law of accretion as applied to private riparian owners.

LONG BEACH TITLE TO SUBMERGED LANDS

It is conceded, though not mentioned in the other briefs, that Long Beach has some kind of title to all such lands within its boundaries, whether "in-

land waters," "tidelands," or "submerged lands." The real and actual question is what kind.

I

It was pointed out in the first Amicus Curiae brief heretofore filed, that by Cal. Stats. 1911, p. 1034, 1925, p. 35, 1935 p. 793. (Appendix A-1, A-2, A-3 of first A. C. brief) California granted *all of its rights, title and interest* to Long Beach. And that in 1938 the Supreme Court of California held the grant to be a title in fee simple, including the oil rights. *City of Long Beach v. Marshall*, 11 Cal. 2d 609, 82 P. 2d 362, at p. 364. This was a unanimous decision by the full Court, and would seem final and binding as settled law. However, in a later case, in a friendly suit by the City Auditor decided after United States v. California was decided the California Supreme Court in a 4-3 divided opinion held, for the first time, that income from "tidelands" had to be used by the City for harbor, commerce, navigation and fisheries; but that no part of the funds reverted to the State of California. *City of Long Beach v. Morse*, (1947) 31 Ca. 2d 254, 188 P. 2d 17. It should be noticed that in this case the Court pointed out that it was not passing upon "submerged lands" at page 19, 188 P. 2d. This decision was based upon the general law of private trust, that in the *absence of specific authority*, trust income cannot be used for other than trust purposes. (188 Pac. 2d 17 at 20) One of the justices pointed out in a well reasoned dissenting opinion that the State itself owned tidelands (the only lands passed upon) in a special kind of trust for all the people, 188 P. 2d 17 at 25, and hinted that the State itself should use the income from such lands for commerce, harbors,

navigation and fishing. It would seem logical that if the State can use the income for any purposes, as it does, then the City has the same right to use its income for any purposes.

Subsequent to the *Morse case*, supra, and after *United States v. Louisiana*, 339 U. S. 699, (1950) but prior to the Submerged Lands Act (1953) the City of Long Beach amended its charter, by Section 260.8 which was approved by the State, Section 8 Stats. 1953, p. 3826. Also the State of California passed and put into law Calif. Stats. 1951, p. 2443-2445 which provided in Section 2, that 50% of the oil revenue and all dry gas revenue received by the City of Long Beach could and should be used *by the City* for upland uses within the City. This State Statute did not provide that any funds whatever were to revert to or become State funds. (Appendix B hereto) Since the City owns all lands within its borders in the very same trust capacity as the State owns lands outside of cities and towns, it would seem that the city has the same rights, no more, and no less, to use the income for general purposes the same as the State does. It is clear this 1951 Act by California intended to and did release 50% of oil funds and all dry gas funds for upland uses by the City. It is likewise clear that this 1951 statute was in effect when the Submerged Lands Act was passed.

That Congress intended to approve the State law, then in effect by the Submerged Lands Act, and that Congress intended Long Beach to receive and use the lands and funds under such arrangements cannot be denied. In fact, the State of California claims the same, except the State claims that the law in effect

in 1947, prior to U. S. v. California, should prevail. If we agree with the State and take the law in effect prior to 1947 or U. S. v. California as the prevailing date, then we find the City of Long Beach entitled to use all of the income for any purposes under its fee title.

City of Long Beach v. Marshall, (1938) 11 Cal. 2d 609, 82 P. 2d 362, at 364.

A further fact showing that Congress definitely intended that Long Beach have the lands and funds under the Submerged Lands Act is found in Section 3 (1)(T) of the Act which released and turned over to the City of Long Beach all impounded funds. The Act did not release the impounded funds to the State of California, but did release them to the City, which shows a clear intent that Congress intended Long Beach to have the funds and lands to be used as provided by State law then in effect.

It is conceded, as said by Judge Merrill in the *Twombley case* (Appendix "A", p. 4 hereto) that Congress did not intend to "undo or override arrangements *theretofore* made by the several states," but it is urged that Congress did not intend to make it possible for the State in the future to recant on written grants and take the lands or funds from the City. (Emphasis added)

II

No word has been found in any majority report by any Senator or other public official that it was the intent of Congress to make it possible for the State to take the lands and funds from any grantee of the states. In fact if such a suggestion had been made

or considered it would have been a "shock" to any fair mind.

Surely it cannot be said that under the terms of the Submerged Lands Act, the State could recant on written leases or grants made to private firms and take the income from such private grantees and use it for its own uses. Such is unthinkable under the settled law. The same is true of the City.

It was not until 1955, long after the Submerged Lands Act, that *Mallon v. City of Long Beach*, 44 Cal. 2d 199, 282 P. 2d. 481, decided that the State could take the income from the lands in Long Beach (even this case limited its decision to "tidelands" and not to lands granted under the Submerged Lands Act. This case was started by a taxpayer against the City, and the State of California was not even a party to the action.

Congress could not have considered this 1955 case as the law of the State as it was not decided until after the Submerged Lands Act. The 1951 Statute was the latest Statute by the State and was what Congress had to rely upon as the law. As pointed out above there is not one word or act which would show that Congress intended to make it possible for the State to take the lands or income from the City by later decisions or Statutes.

Congress made very sure that grantees and lessees did not receive more rights than they had under State grants prior to the Act. Section 1301 (d) 43 U.S.C., provides:

> "* * * provided, however, that nothing herein shall be construed as conferring upon said grantees or lessees any greater rights or interests

other than are described herein and in their respective grants from the states, or its predecessor sovereign."

We must assume that Congress did not intend to grant less rights or interests than held prior to the Act, and did not intend to take any rights away from the City. The City is not trying to get or take more rights than it had, or all parties thought it had, under state law prior to U. S. v. California (1947), plus whatever rights were granted to it under the Submerged Lands Act. The Supreme Court of California had held, and all parties thought, the City had a fee simple title, including the oil and gas.

City of Long Beach v. Marshall, 82 P. 2d 362.

The taxpayers are trying to protect and preserve all of the rights they had prior to the Submerged Lands Act, plus whatever rights they received under it, no more, and no less.

NATURE OF TRUST OR TITLE

It has been said that before this Nation was formed the tidelands and lands under inland waters were owned by the Crown in trust for all the people to use for commerce, navigation and fishing, that the original colonies did not own such lands, and that after the formation of the Union the original states became the owner of such lands in the same trust as held by the Crown. Later states admitted to the Union upon equal footing became the owners of such lands by reason of their sovereignty and held them in the same trust manner, and the United States became the owner of the three-mile marginal belt below low tide and

outside of inland waters along the Coast of California.

United States v. California, 332 U. S. 19.

No reported case has been found from England or any State which defined in clear and exact terms just what kind of a trust the lands were held under; or decided or explained what the income from such lands could be used for. The closest case found is *Illinois Central Ry. Co. v. Illinois*, 146 U. S. 387, in which case the funds or income was used by the City of Chicago for park purposes, not commerce, navigation or fisheries, but it was a public use by the City. The Court made no direct decision on that point at all, so we are not much enlightened by the case.

After 1947 and after United States v. California was decided, it was held in *City of Long Beach v. Morse*, (1947) 31 Cal. 2d 254; 188 P. 2d 17, that in the absence of legislative provisions to the contrary, the city has no right to use the income for other than commerce, navigation and fisheries. (at p. 20 of 188 P. 2d)

It is certain that the State itself was a trustee of the lands, not a trustor or settlor under the trust, and all of the people of the United States are the beneficiaries.

Mallon v. City of Long Beach, 44 Cal. 2d 199 at 215.

As a trustee itself of the lands the State of California does not have legal authority to revoke the trust or any part thereof, call itself the settlor, and take the income for State uses.

Thereafter, on June 6, 1951, the State declared that Long Beach was receiving and would continue to re-

ceive many million dollars of surplus income from the lands, which income was not needed for commerce, navigation and fisheries on the lands. The state undertook to release this vast sum of surplus income from the trust and assign it to Long Beach to be used by the City, 50% of oil funds and all dry gas income to be for upland city uses, and the other 50% of oil income to be used by the city for harbor, commerce, navigation and fisheries on the lands. (Appendix B) In 1955 the Supreme Court of California misconstrued the trust relation of the lands, and held that the Statute worked a reversion of the surplus funds to the State.

Mallon v. City of Long Beach, (1955) 44 Cal. 2d 199; 282 P. 2d 481.

On June 25, 1964, the United States Court of Appeals for the Ninth Circuit held, by a three judge division that the Mallon rule applied to offshore submerged lands which were confirmed to Long Beach under the Submerged Lands Act. (Appendix A, p. 4) We felt this case to be error so filed a motion or suggestion that the case be re-decided en banc; or that the points be certified to this Court for final decision. (Appendix D) This was denied.

INCOME FROM AND CONTROL OVER THE LANDS

This important topic is divided into the following questions.

1. Does the trust use of the lands require any trust use of the income?

It would be conceded, we assume, that the State could not grant more rights to the City than the State

owned itself. It is also clear the State intended to and did grant whatever rights it had to the City in 1911, *City of Long Beach v. Marshall*, 82 P. 2d 362, including the oil and gas rights.

The latest case is *Twombley v. City of Long Beach*, et al., decided on June 25, 1964 by the United States Court of Appeal for the Ninth Circuit (not yet reported but attached hereto as Appendix "A") which extended the trust rule and authority of the State to take income from the City of offshore submerged lands. This latest decision did not decide the direct question of whether or not a state has legal authority to take lands and income from a city and the taxpayers, but it did approve the trust theory. (Appendix "A", p. 5) It is respectfully urged this case is error because it did not consider the correct nature of the trust under which the lands are held by Long Beach.

LONG BEACH OWNS ALL LANDS WITHIN ITS BOUNDARIES REGARDLESS OF KIND OR FROM WHOM IT RECEIVED TITLE

Lands under inland waters, including bays, harbors, estuaries or inlets, were granted to Long Beach by the State in 1911. (Stats. 1911, p. 1034)

Tidelands and submerged lands within the City were also granted to Long Beach by the same Statute at the same time. It was later found that neither the State nor the City owned the offshore submerged lands, *U. S. v. California.* However, under the terms of the Submerged Lands Act title was granted to the City to all submerged lands; and the title to tidelands were confirmed in the City.

Even if we use the term, "restore" as the State does, or the word "confirm" as the Judge did in the *Twombley case*, or the word "quitclaim" as used by the Court in *People v. Hecker*, 179 Cal. App. 2d 23; or the word "grant" as used by this Court, *United States v. Louisiana*, 363 U. S. 1, p. 6, we have the same end result and Long Beach owns all lands within its borders. This is especially true since the Supreme Court of California had held the City has a title in fee simple including the oil rights, and the right to produce and take the oil.

City of Long Beach v. Marshall, 11 Cal. 2d 609, 82 P. 2d 362 (1938).

KIND OF TITLE HELD BY THE CITY TO TIDELANDS AND LANDS UNDER INLAND WATERS

Lands washed by the daily ebb and flow of tidewaters on the bank of Mobile River in Alabama were held to belong to the State by reason of its sovereignty in early times. *Pollard v. Hagan*, 3 How. 212, 11 L. Ed. 565. These lands are held in trust by the states so that all people can have access to the waters for commerce, navigation and fishing. *Illinois Central Ry. Co. v. Illinois*, 146 U. S. 387, 13 S. Ct. 110, 36 L. Ed. 1018. The exact kind of a "trust" has never been clearly defined by the Supreme Court of the United States. Some Courts have called it a "special trust," others have treated it the same as a private trust. This Court has held that a State is powerless to dispose of all such lands in a manner to deprive the people of all access to the waters. *Illinois Central Ry. Co. v. Illinois*, supra. This Court has said:

"* * * California has a qualified ownership of lands under inland waters such as rivers, harbors, and even tidelands down to the low water mark."

United States v. California, 332 U. S. 19 at p. 30.

There was no further clarification of what "qualified ownership" means; and no mention or holding in any case by this Court for what purposes the income from such lands can be used. A direct decision explaining the nature of the trust and for what purposes, and by whom, the income could be used seems not to have been determined by this Court before.

It is respectfully urged that such a decision is now overdue; and in this case, here and now, is the proper time and place for such a decision. This Court is well aware of the importance of such a decision to the United States, many states, and all cities and private firms holding grants or leases on such lands of either kind. The law is very unsettled and confusing now, and will get no better until and unless this Court speaks.

The State claims to hold the ungranted lands in its sovereign ownership in trust for all the people for commerce, navigation and fisheries, yet the State claims the right to use the income for any purpose.

It is conceded on behalf of the taxpayers of Long Beach that the State of California is correct in such claims, and the trust relationship of the lands as such do not furnish any basis for trust restrictions on the income from oil and gas produced therefrom. All other states receiving land or rights under the Submerged Lands Act, or tidelands or lands under inland waters in trust seem to agree and so far as is known use

the funds for any purposes. All cities and others holding such lands as grantees or lessees, except Long Beach alone seem to use the income from such land for any public purpose.

It is urged that even though the lands granted to the City by the State had special trust restrictions on the lands, the same as existed for the State, no trust restrictions were placed upon the income by the 1911 Statute so none should or do exist on the income.

The 1911 state statute (1911 Stats. p. 1034) did not refer to Long Beach as a "trustee" or agent of the State. It was a grant of land to be forever held in trust for certain purposes — to build a harbor on for commerce, navigation and fisheries (the same as the State owned the lands).

Second: The Courts have treated the 1911 grant by the State to Long Beach as a free gift of land without consideration to the State. This, it is urged is error. The 1911 Statute provides:

> "Section 1. There is hereby granted to the City of Long Beach, a municipal corporation of the State of California, and to its successors, all right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all the tidelands and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific Ocean, or any of any harbor, estuary, bay or inlet within said boundaries, to be *forever* held by said city and by its successors, in trust for the uses and purposes, and upon the express conditions following to wit:
>
> (a) That said lands shall be *used* by said city and by its successors, solely for the *establishment*,

improvement and *conduct of a harbor* and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce, navigation, and said city, or its successors, shall not, at any time, grant, convey, give, or alien said lands, or any part thereof, to any individual, firm or corporation for any purpose whatever; *provided*, that said city, or its successors, may grant franchises thereon, for limited periods, for wharves and other public uses and purposes, and may lease said lands, or any part thereof for limited periods, for purposes consistent with the trusts upon which said lands are held by the State of California and with the requirements of commerce or navigation at said harbor;

(b) That said harbor *shall* be improved by said *city without expense to the State*, and shall always remain a public harbor for all purposes of commerce and navigation, and the State of California shall have, at all times, the right to use, *without charge*, all wharves, docks, piers, slips, quays and other improvements constructed on said lands, or any part thereof, for any vessel or other water craft, or railroad, owned or operated by the State of California.

(c) * * * No discrimination in rates * * *.

Reserving, however, in the people of the State of California the absolute right to fish in the waters of said harbor, with the right of convenient access to said waters over said lands for said purpose. (Emphasis added)

We see from a close reading of the above statute of 1911 the important, and we contend, controlling facts to be:

(a) That the lands are to be held in trust "forever."

(b) There was no definite trust placed on the income.

(c) The City was not named or designated as "trustee."

(d) There was consideration for the grant of land.

(e) The grant provided for a continuing valuable consideration to the State.

(f) The State was not named or designated as "trustor."

(g) The grant provided the lands shall be *used* * * * for a harbor, navigation and commerce. It *did not* provide for the lands shall be *devoted* to a harbor.

THE COURTS HAVE TREATED THE CITY AS PRIVATE TRUSTEE

The Courts have treated the trust relationship the same as a private trust, which, we submit, was error. In an ordinary private trust there is generally a named "trustor," a named or designated "trustee" and a named or designated beneficiary, with the duties of the trustee specified in detail; and directions as to whom shall receive the income, if any. None of these facts are set out in detail in the 1911 grant from the State.

It is urged that the grants to the City should not be treated the same as private trusts; that Long Beach received a title in fee subject to the trust duties that it not unduly hinder the people from access and use of the waters for commerce, navigation and fishing, and that income from such lands can be used for

any public purposes as provided by City Charter.

City of Long Beach v. Marshall, (1938) 11 Cal. 2d 609, 82 P. 2d 362.

(a)

There has been no claim that the City has not complied with the terms of the grant, or that it has used the lands in such a manner to work a forfeiture. Yet the Supreme Court of California has treated the trust as expiring, or as being incapable of further performance. *Mallon v. City of Long Beach,* (1955) 44 Cal. 2d 199, 282 P. 2d 481, p. 486. The term of the 1911 grant was "forever," hence had not and cannot expire, and the authorities cited in *Mallon,* supra, do not apply and are not binding. This is true even as to offshore submerged lands which the State did not own at the time, because the Submerged Lands Act granted a new title or confirmed the old title to the City as good from the beginning. *Superior Oil Company v. Fontenot,* 213 P. 2d 565 (cert. denied 348 U. S. 837). The Submerged Lands Act (1953) was prior to Mallon (1955).

(b)

CONSIDERATION FOR THE GRANT

It was said in *Mallon v. City of Long Beach,* 44 Cal. 2d 199, 282 P. 2d 481, at 490, that when the State embarked upon the plan of granting lands to the cities for them to build harbors on, the lands were, in most cases, of little value to the State. Long Beach accepted the grant with the written provision that the city would build a harbor at *no cost* to the State. Long Beach did build such a harbor at no cost to the

State, using bond money in the sum of $8,245,000.00 which the taxpayers had to and did repay. Hence this valuable consideration was paid by the taxpayers who are in reality the trustors of any resulting trust under the law, Scott-Trusts, Vol. 3, Sec. 434. There was not only a valuable consideration paid by the City and taxpayers, but it would seem to have been adequate, or at that time, a high consideration.

(c)

CONTINUING VALUABLE CONSIDERATION TO THE STATE

The above 1911 statute provided that the State has the right at all times to use the harbors, wharves, docks, piers, at *no cost* to the State. The State has used in the past, still does, and will in the future use the harbor and facilities at no cost to the State. This right is of considerable benefit to the State, and a cost to Long Beach. It is a continuing valuable consideration for the written contract; and it is urged, cannot be broken by the State.

County of Los Angeles v. Southern California Telephone Co., 32 Cal. 2d 378, 196 P. 2d 773, at 778;

Board, et al v. Lucas, 93 U. S. 108, 23 L. Ed. 822, p. 824.

PRIVATE TRUSTS

Even if we agree that Long Beach holds the lands in the same capacity as a private trustee, still the City, and in equity, the taxpayers, are entitled to surplus funds accumulating from the lands. This is

true because of the consideration for the grant.

Scott-Trusts, Vol. 3, Section 434.

In 1953 the City decided and declared by Charter amendment Section 206.8 that surplus revenues were being received and in the future would be received which were not needed for harbor, commerce and navigation, and assigned 50% of oil revenues and all dry gas revenues to upland uses by the City. The State by concurrent resolution of the Legislature, Sec. 8, Stats. 1953, p. 3826, approved the Charter provision by the City. Prior to the above Charter amendment the State of California passed and put into law Chapter 915, Stats. 1951, pp. 2443-2445, which found and declared that surplus revenues and funds were being received and in the future would be received which were no longer required or needed for any trust purposes and released 50% of oil and all dry gas income. (Appendix B, p. 3b)

This 1951 statute did not provide that any funds would revert to the State, or provide or indicate that it was the intent of the State to "thus take to itself" as said in *Twombley v. City of Long Beach.* (Appendix "A", p. 3)

Where transferee pays consideration for the trust he is in fact the settlor.

Scott-Trusts, Vol. 3, Sec. 433.

Where trusts can be fully performed without exhausting the trust, the resulting funds can be used by the trustees.

Scott-Trusts, Vol. 3, Section 434.

Thus, it is clear that both the City and the State decided and declared there were surplus funds not

needed for the public trust which should be released to the City to be used by it for upland public use. In any event, the City would be entitled to surplus funds under the above sections of trust law, without the 1951 State statute.

In *Mallon v. City of Long Beach,* (1955) 44 Cal. 2d 199-208 (282 P. 2d 481) the Court placed its decision squarely upon Section 2280, Civil Code of California, as authority that a trustor can revoke a trust. This we see is error. As originally drawn in 1872, Sec. 2280, provides:

> "A trust *cannot* be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all of the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued." (Emphasis added)

In 1931 the original statute was changed and now Section 2280 provides:

> "Unless expressly made irrevocable by the instrument creating the trust, every *voluntary* trust shall be revocable by the trustor by writing filed with the trustee. When a *voluntary* trust is revoked by the trustor, the trustee shall transfer to the trustor its full title to the trust estate. Trusts created *prior* to the date when this act shall become a law *shall not* be affected thereby (As amended Stats. 1931, c. 950 p. 1955, Sec. 1)" (Emphasis added)

This section applies to voluntary trusts created without valuable consideration passing to the trustor. *Touli v. Santa Cruz County Title Co.,* 67 P. 2d 404. Thus we see that if value passed, as in the case at bar,

even under the new Section 2280 the trustor cannot revoke a trust.

Even if we agree that the State of California is a trustor (which we do not) under the old Section 2280, which was in effect in 1911 when the grant was made, it cannot be revoked under the statute. *Roberts v. Taylor*, (C.C.P. 1924), 300 F. 257 (Certiorari denied 226 U. S. 629).

Under the original Section 2280, a voluntary trust cannot be revoked.

> *Gray v. Union Trust Co.*, 171 Cal. 637, 154 Pac. 306.

Section 2280 provided specifically that trusts made before 1931 were not affected by the act. Since the grant to the city was in 1911, it was not affected by the act.

Surely the Court was not informed of the above cases and statute provisions, because otherwise, it simply could not have made such an error in *Mallon v. City of Long Beach*, 44 Cal. 2d 199-208, 282 P. 2d 481.

The interpretation of Federal Laws; or the title to and extent of lands granted under or controlled by Federal Laws, or by the United States Constitution, are within the jurisdiction of this Court, *Borax Consolidated Co. v. Los Angeles* 296 U. S. 10, and this Court is not bound by the reasoning of State Courts in relation thereto.

If we assume that the State has authority to revoke the trust or any part thereof (which we do not agree it has), and assuming further that the Statutes, 1951 - 1956 - 1964 did work a partial revocation of the trust,

this would work a reversion of the funds to the City and taxpayers under the law of trusts, Scott-Trusts Vol 3, Sec. 433, this is true because the State received consideration.

If the State Statutes, Chapter 29, Extra Session 1956, and Senate Bill No. 60, 1964, which attempts to revoke the trust and take the funds from Long Beach are unconstitutional, as we urge they are now, they would be void and of no effect. They would not revoke the trust or any part of it and as a result the State would have to repay or pay back all funds and money given to it by the City of Long Beach.

THE 1911 GRANT DID NOT CONTAIN PROVISIONS THAT TRUST COULD BE REVOKED OR MODIFIED

When there is no provision in the trust instrument reserving power of the settlor to revoke the trust, the trust is not revocable by the settlor, although he received no consideration for the trust, Restatement of Trusts, Sec. 330 (b).

A settlor has no power to modify a trust, if he did not reserve such powers in the trust instrument.

Bogart-Trusts Sec. 992, Restatement of Trusts Sec. 331;

La Rocoa (1963) 192 A. 2d 409, 411 Pa. 633.

No implied power exists in a settlor to revoke a gift of legal interests.

Sec. 998 Bogart-Trusts;

Prince v. Burger, (1962) 176 A. 2d 870, 227 Md. 351;

Sec. 535 Scott-Trusts.

This was the settled law in California when the grant was made in 1911, and until 1931 when Section 2280 Civil Code was changed.

LATER EFFORTS TO TAKE OIL AND GAS INCOME FROM LONG BEACH

After the unexpected windfall to the State as a result of the Mallon decision (which was not appealed to or approved by this Court), the State passed Chapter 29, Stats. 1956, which took all of the impounded funds that had been paid to the City by the United States, in amounts exceeding One Hundred Twenty Million Dollars ($120,000,000.00); plus 50% of oil income, and all dry gas revenues to be applied to State general uses. This 1956 statute has been in effect since 1956, and the State has been paid over Two Hundred Million Dollars ($200,000,000.00) by the City of Long Beach, without value received. Also the State took supervision and control of the funds, and lands, and requires that the City use its funds for harbor, commerce and navigation, under State control. (Appendix E, p. 8e)

In 1964, at the Extra Session of the State Legislature, the State passed and put into law Senate Bill 60, which takes up to 85% of oil money and all dry gas income from the City; also takes more control and supervision of the lands and income, and restricts further the uses which the City can use oil income for. (Appendix F, p. 5f)

Senate Bill No. 60 does not name or require any other city within California which holds similar lands to pay any part of the income from such lands to the State. There are several other cities in California hold-

ing similar lands under grant from the State: Los Angeles, San Diego, Oakland, and others. (The pertinent part of S. B. 60 is attached hereto as Appendix F)

Senate Bill No. 60 was signed into law prior to, and was in effect approved by the *Twombley* decision which was announced on June 25, 1964. (Appendix "A", p. 1)

It is urged that both Chapter 29, Stats. 1956, and Senate Bill No. 60, are unconstitutional and void; or ineffective to take the lands and income from the City and taxpayers of Long Beach, for the following reasons:

(a) Both statutes take funds and income from lands granted to Long Beach, either by the State of California under a written grant for value, or by the United States under the Submerged Lands Act. In either event it is taking funds and property rights without due process of law as is guaranteed under due process of law provisions of the United States Constitution. More fidelity should be required of a State when dealing with a city or the taxpayers thereof than is required of private dealing between private parties. A State should not be allowed to recant on its written agreements for value, and to rely upon the so-called trust theory to take the income.

States do not have unlimited authority over cities and towns.

Lightfoot v. Alabama, (1960) 364 U. W. 339 at p. 345.

(b) Each statute names and affects only Long Beach, no other city or firm is named or affected and

no funds are taken from any other city, though many other cities in the State hold lands under the same kind or similar grants by the State. This, it is urged, is unequal treatment or protection of the taxpayers of Long Beach under the law in violation of the 14th Amendment to the Constitution of the United States.

(c) Each of the statutes attempted to decide and compromise legal actions then pending in the Courts. (Appendix E, p. 4e) (Appendix F, p. 8f)

Under our form of government where each of the three branches is limited to its own authority, nothing is better settled than the Legislature cannot decide Court actions, or exercise judicial functions, 11 Cal. Jur. 2d, page 476, Sec. 118.

(d) In addition to the above mentioned points (a) (b) and (c), Senate Bill No. 60, Extra Session 1964, attempts to set, determine, and define the tide line along the Coast of Long Beach, in total disregard of this action now pending before this Court. (Appendix F, p. 8f)

(e) Section 9 of Chapter 29 First Extra Sessions Laws 1956 provides: (Appendix E, p. 10e)

> "* * * Any decree of judgment entered into on stipulation provided for in this act shall be final as to any and all matters."

Hence, this act attempts to prevent any civil action by any party, taxpayer or otherwise. It seems to violate the due process of law clause of the Constitution of the United States, in that it attempts to deprive taxpayers of their right to start legal actions to protect property rights and redress wrongs. A vested right of action is property in the same sense

in which tangible things are property, and is equally protected against arbitrary interference.

Anderson v. Ott, 127 Cal. App. 122, 15 P. 2d 526;
11 *Cal. Jur.* 2d Sec. 228, page 648.

CONCLUSION

It is respectfully urged as follows:

1. That Long Beach, California, the citizens and taxpayers thereof, own all lands under inland water, tidelands, and offshore submerged lands within its boundaries; that said lands are held in a special trust forever so that all people can have access to and use the waters for commerce, navigation and fishing.

2. That Long Beach has the exclusive right to use any and all income from such lands for public uses.

3. That the State of California has no legal right to take and use any of such income from above described lands; has no legal control over the operations of the lands or harbor, and no right to require the City to use the lands or funds in any manner; except that the State has use of the harbor or any of its facilities free of cost forever; and except for police powers of the State under the law.

Respectfully submitted,

Attorney for Amicus Curiae
JOHN B. OGDEN